

FILE

RESOLUTION

MOVED by Mauro SECONDED by Brownell

that the following Resolution be adopted:

WHEREAS, as owner of the Iowa Events Center complex, Polk County is party to a Master Lease Agreement with Global Spectrum, L.P. concerning Wells Fargo Arena ("Lease Agreement"), and;

WHEREAS, pursuant to the Lease Agreement, Global Spectrum, L.P. has the right and authority to license the use of Wells Fargo Arena to third parties, and;

WHEREAS, Global Spectrum, L.P. desires to enter into an agreement with Iowa Basketball, LLC for the use of Wells Fargo Arena for the NBA Development League, and;

WHEREAS, pursuant to the Lease Agreement, any agreement regarding the licensed use of Wells Fargo Arena is subject to the approval of Polk County, and;

WHEREAS, it is the desire of Polk County to approve such an agreement.

NOW, THEREFORE BE IT RESOLVED that Polk County provide its approval to the License Agreement between Global Spectrum, L.P. and Iowa Basketball, LLC concerning the use of Wells Fargo Arena.

POLK COUNTY BOARD OF SUPERVISORS

Tom Hockensmith
Chairperson

SUBMITTED BY:

Sue Elliott
Sue Elliott
Project Manager

Approved as to Form:

M. B. O'Meara
Michael B. O'Meara
Assistant Polk County Attorney

ROLL CALL
FOR ALLOWANCE

E.J. Giovannetti	<u>Yea</u>	Nay
Robert Brownell	<u>Yea</u>	Nay
Angela Connolly	<u>Yea</u>	Nay
John F. Mauro	<u>Yea</u>	Nay
Tom Hockensmith	<u>Yea</u>	Nay

NOV 23 2010

ALLOWED BY VOTE
Yea 5 Nay 0
CHAIRPERSON
Above tabulation made by BD

Fiscal Impact: None.

#20

LICENSE AGREEMENT

THIS LICENSE AGREEMENT (this "Agreement" or "License"), is made and entered into as of the 8th day of October, 2010, by and between GLOBAL SPECTRUM, L.P., a Delaware limited partnership, having an office at 730 Third Street, Des Moines, IA 50309 ("Licensor"), and IOWA BASKETBALL, LLC, an Iowa limited liability company, having its principal office at 1701 Ruan Center, Des Moines, Iowa 50309 ("Licensee").

BACKGROUND

Licensor leases from Polk County, Iowa (the "County") the sports and entertainment arena located in Des Moines, Iowa currently known as the Wells Fargo Arena, and has the right and authority to license use of the Wells Fargo Arena to third parties. Licensee represents and warrants to Licensor that it has acquired a franchise from the National Basketball Development League, NBDL (the "League") and has the right to own and operate a professional men's basketball team, name TBD (the "Team") in the Iowa State region. Licensee desires to license the use of the above-referenced arena from Licensor, and Licensor is willing to license the use of the above-referenced arena to Licensee, all subject to the terms and conditions set forth below.

NOW, THEREFORE, incorporating the above background, in consideration of the covenants and agreements contained herein, and intending to be legally bound hereby, the parties agree as follows:

1. License Grant.
 - A. Licensor hereby grants to Licensee a non-exclusive license to use, and Licensee shall use, as determined in accordance with Subsections 2.B. and 12.A below, that portion of the arena currently known as the Wells Fargo Arena (the "Arena"), including the Arena's floor, seating facilities, access areas, public address and sound systems, scoreboards, video boards, dressing rooms, press rooms, corridors, stairways, walks, concourses, lavatories, sub-levels in or about the Arena and such other areas or parts of the Arena as may be necessary or reasonably desirable for the presentation and play of Licensee's entire "home" schedule of pre-season, regular season and playoff men's professional basketball games (hereinafter, the "Games") during the Term (as defined below), subject to the terms and conditions set forth below and in Schedule I attached hereto.
2. Term; Renewal; Scheduling.
 - A. The initial term of this License (the "Initial Term") shall commence upon execution and delivery hereof and shall remain in effect for the 2010-11, 2011-12, 2012-13, and 2013-14 League Seasons (as defined below).

- B. Subject to the provisions set forth on Schedule I attached hereto and made a part hereof, between the months of October and April of each year during the Term (as such period may be modified to comply with League mandated changes to the timing of the League schedule) ("League Season"), Licensor shall make the Arena available to Licensee on available dates, and Licensee shall use the Arena, for the Permitted Use (as defined in Section 12.A below). Licensee agrees that the Team shall play all of its Games in the Arena throughout the Term, and the Team shall not relocate outside the boundaries of its current local territory.

3. Items To Be Provided by Licensee.

In connection with each Game to which this Agreement applies, Licensee shall furnish or arrange to be furnished, at its own expense, the following:

- A. Two teams of men's professional basketball players, in conformity with League rules and regulations;
- B. Equipment and uniforms for the players;
- C. Coaches and any assistant coaches;
- D. Trainers and medical personnel for the players;
- E. Referees and any other necessary officials for the Games;
- F. Timekeepers, scorekeepers, game clock operators and public address announcer for the Games;
- G. Catering for press or others for whom Licensee desires to provide refreshment, special badges and signage, soap, towels and related locker room items;
- H. Food, beverage and travel expenses for the players, coaches and referees, as agreed with the players, coaches and referees;
- I. All Team personnel, including staff and front office personnel, according to Licensee's needs;
- J. Creative consulting with respect to the presentation of the Games and staff to carry out such presentation, including pre-Game and intermission activities;
- K. Marketing services to promote the Games and ticket sales for the Games, as more fully described in Section 6 hereof;
- L. Merchandise and novelty items for sale at each of the Games, as more fully described in Subsection 10.B hereof

- M. Forty (40) complimentary tickets, located in the lower bowl of the Arena and between the free throw lines, to each Game for use by Licensor and its designees, all of which shall be in contiguous sets of four (4). Additionally, four (4) of the complimentary tickets per Game provided pursuant to this Section 3.M shall be price level one tickets.
- N. Credit and commissions payable on sales of tickets to the Games, as more fully described in Subsection 14.F below;
- O. Music performance licenses for the Games, as more fully described in Subsection 15.D below;
- P. Insurance coverage for the Games in accordance with the provisions of Section 16 below; and
- Q. Taxes, licenses and inspection charges and other similar fees that may be payable on account of the use or provision of any of the above, including without limitation any property tax that may be assessed on Licensee's property.
- R. Any additional equipment necessary for the playing and presentation of the Games which Licensor is not required to provide pursuant to the terms of Section 5 below.
- S. Storage off of Arena property for any Team equipment that Licensor is not able to accommodate (as determined by Licensor in its sole discretion) in in-Arena storage space provided by Licensor.

4. Optional Items To Be Provided by Licensee.

Subject to the provisions of this Agreement, for reasonable business purposes, Licensee may provide for or arrange to do, at its own expense, the following:

- A. Obtain local and national sponsorships for the Games; and
- B. Secure local and national television broadcasting for the Games.

5. Items To Be Provided by Licensor.

In connection with each Game to which this Agreement applies, Licensor shall furnish or arrange to be furnished, at its own expense unless otherwise indicated, the following:

- A. The Arena, including the Arena's floor, seating facilities and access areas, a basketball floor, basketball goals, shot clocks, the public address system, sound system, scoreboards, game clocks and video board, available locker/dressing

rooms for the visiting team and referees, press room and broadcast areas, and such other parts or areas of the Arena as may be reasonably necessary for Licensee to present, play and broadcast the Games;

- B. A locker room for use by the Team on each Game day, and when available, on those days in which Licensee practices at the Arena, provided that Licensor shall retain the right to utilize said locker room at times and in connection with events when use thereof is not required by Licensee;
- C. Fifty (50) parking passes in an area designated by Licensor within the non-public Arena lot, for use by the Team's players and other Licensee personnel. Passes are not for resale.
- D. Normal and customary levels of electricity and other utilities for lighting, heating, air conditioning and other services used in conjunction with the Games, consistent with that which is provided for other Arena events;
- E.
 - (1) Necessary set-ups and changeover for the Games, including set-up of basketball floor, goals and shot clocks as approved for League games, provided that Licensee shall pay the cost of stagehands in connection with production/game operation set-up (e.g. video boards, spotlights, camera operators);
 - (2) Upon request by Licensee, Licensor shall apply sponsor logos and messages to the playing surface and dashboards, subject to the provisions of Subsection 8.B. below. As between Licensor and Licensee, Licensee shall be responsible for all expenses associated with producing sponsor logos for, and affixing the same to, the playing surface and the dashboards. Licensee shall further be solely responsible for all costs incurred by Licensor as a result of any changes in advertising copy, a change in position, television restrictions or any other cause.
- F. At Licensee's option, group sales and/or season ticket sales, provided that Licensee shall be solely responsible for paying or reimbursing Licensor for all applicable sales commissions (charged at the rate of ten percent [10%] on the gross ticket selling price, less applicable amusement taxes), and sales expenses related thereto;
- G. The following support services, the cost of which shall be borne by Licensor and are to be included within the Per-Game Fees:
 - (1) Cleaning and janitorial service during and after the Games;
 - (2) The services of the following staff and personnel in connection with Games: ushers, ticket-takers, emergency medical technicians (for patrons

only), change-over and set-up crew, sound technician, house electrician, and ticket sellers and box office personnel for the day or evening of each Game. The costs of any personnel or services provided by Licensor in connection with pre- or post-Game events or activities that are in no way related to those activities necessary for the production of the Games shall be paid by Licensee. Notwithstanding the foregoing, Licensee acknowledges that, for Games at which attendance is anticipated to exceed 4,000, Licensor may, if deemed necessary or desirable by Licensor in its sole discretion, engage additional ushers and ticket takers above the levels presently contemplated, and Licensee shall be responsible for the incremental cost of such additional ushers and ticket takers.

H. The following support services, the cost of which shall be paid by Licensee (or reimbursed to Licensor by Licensee), in addition to the Per-Game Fees:

- (1) The services of the following staff and personnel: security guards and supervisors, police detail, stagehands (stagehands must operate all spotlights), video board and camera operators, game operations and production staff, and any other event operational staff and personnel reasonably necessary, as determined by Licensor, for the efficient and safe presentation of the Games or to comply with League requirements; PROVIDED, HOWEVER, THE FOREGOING SHALL NOT BE CONSTRUED AS A WARRANTY, REPRESENTATION OR GUARANTEE AS TO THE ADEQUACY OR EFFECTIVENESS OF ANY LEVEL OF SUCH STAFFING OR SECURITY MEASURES, FOR ALL OF WHICH, LICENSOR IS HEREBY EXPRESSLY RELEASED AND EXCULPATED BY LICENSEE.
- (2) Additional mutually-agreed upon services, other than those set forth above, which Licensee requests to be provided by the Licensor and which Licensor is reasonably able to provide.

6. Marketing and Promotion.

- A. Licensee, at its sole expense, shall provide all necessary personnel to, and be solely responsible for, the marketing and promotion of the Team and the Games, except that (1) Licensee may request that certain Licensor personnel assist Licensee in such marketing and promotional activities, and, in the event Licensor agrees to assist Licensee in such manner, Licensee shall pay Licensor a mutually agreed upon fee for such services, and (2) Licensor may, in its sole discretion, cause mentions of the Games to be included in general Arena event advertising, in the general rotation of spots for Arena events featured on or in the video board at the Arena, in newspaper advertisements for Arena events, and/or promotional brochures. All advertisements for the Games that are developed by Licensee (including but not limited to all advertising publicity material, promotions

material, press releases, posters, flyers, handbills and radio and television commercials) shall be produced at the sole cost and expense of Licensee.

- B. (1) Licensee shall make mention of the full and complete name "Wells Fargo Arena" (or any substitute names approved by Licensor), as applicable, as the site of the Games in connection with any marketing, advertising or promotion thereof. All promotional materials shall contain the standard Arena logo (or any substitute logo directed by Licensor) positioned as designated by Licensor. Licensee shall submit to Licensor for its prior written approval all such uses of the Arena name and logos prior to dissemination of any promotional materials, which approval shall not be unreasonably withheld or delayed.
- (2) All advertisements and marketing and promotional materials for the Games presented or proposed by Licensee pursuant to the provisions of this Agreement (including, but not limited, to all advertising, publicity material, promotions material, press releases, posters, flyers, handbills, and radio and television commercials) shall be submitted by Licensee for approval of Licensor before use, which approval shall not be unreasonably withheld or delayed.
- C. Unless otherwise agreed by Licensor in writing, Licensee, at its sole expense, shall be responsible for the sale of season tickets in the general seating areas of the Arena. Licensor shall be responsible for the sale of tickets in the Suites and Loge Boxes, and Licensor shall retain all revenue from such sales. With respect to seats in the Club Seating Areas of the Arena, Licensee acknowledges that current and future Club Seat licensees have the first right to purchase tickets to the Games in the Club Seats that are the subject of their Club Seat License, and therefore Licensor shall offer such Club Seat licensees the right to purchase such tickets to the Games. In the event any such Club Seat licensee declines to purchase such tickets to the Games, Licensor shall release such Game tickets to the Licensee who may sell such tickets to the general public. The proceeds of any Club Seat ticket sales (whether sold to existing Club Seat licensees or to the general public), less the Facility Fee as described below, shall be retained by Licensee.
- D. Licensee agrees that it shall provide to Licensor, or cause to be provided for the benefit of Licensor, at no cost to Licensor, the following advertising time for the purpose of promoting up-coming events at the Arena:
 - (1) One minute (1:00) of radio advertising time during each Game broadcast on radio (if any);
 - (2) Thirty seconds (:30) of television advertising time during each Game broadcast on local television (if any); and

- (3) Five minutes (5:00) of time on the Arena's public address system during each Game.

The content of all such advertising shall be provided by Licensor, shall be limited to the Arena and upcoming events held at the Arena (inclusive of title sponsors for such events), and shall not be deviated from by Licensee without Licensor's prior written consent. All costs of producing the content of such advertising shall be borne by Licensor.

7. Broadcasting.

- A. Subject to the prior written approval of Licensor, which approval shall not be unreasonably withheld or delayed, Licensee, at its sole cost and expense, shall have the right to, in any reasonable manner, transmit, record or videotape or otherwise reproduce or disseminate all or any part of, or a description of all or any part of, the Games (including but not limited to radio, broadcast and non-broadcast television, closed circuit television and/or pay television, video disc, compact disc recording and the internet) (herein referred to collectively as a "Broadcast,") and all such Broadcasts may be originated and produced by a company selected by Licensee. Licensee may record and/or videotape the Games for its own limited promotional use without first obtaining such written approval. Licensee shall reimburse Licensor for any and all out-of-pocket costs (including, without limitation, the costs of providing any necessary interconnections and electrical hook-ups) incurred by Licensor in connection with such Broadcasts. Nothing in this Agreement shall be construed as preventing Licensor from charging any third party (including without limitation any visiting basketball team or entity with which Licensee contracts to broadcast such Games) a charge in connection with an out-of-market Broadcast of a Game, provided that, in charging for such Broadcasts, Licensor shall give due consideration to any request by Licensee to account for reciprocal agreements entered into by Licensee for broadcasts of Licensee "away games". Licensee shall cause all entities with which Licensee contracts to broadcast Games to arrange with Licensor the terms and conditions (which must be satisfactory to Licensor in its reasonable discretion) under which such entities may have access to, and the use made by such parties of, the Arena.
- B. In the event Licensee causes the Games to be televised, each contract between Licensee and such television broadcaster(s) shall prohibit the use of blocking and insertion technology in respect of any signage which has been installed at the Arena by Licensor or any other party, or to insert advertising or signage not otherwise physically present or appearing in the Arena.

8. Advertising and Sponsorships.

- A. Subject to the provisions of this Section 8., Licensee shall have the right to sell all Game-specific advertising and sponsorships (e.g., playing surface, game clocks, player areas, temporary parapet or railing banners, temporary banners over the dasher boards and video board promotions) and retain all proceeds therefrom. No such advertising shall be permitted to cover any permanent signage at or within the Arena.
- B. (1) Licensor reserves the right to approve or reject each Game sponsor and each banner, signage and playing surface advertisement, promotional announcement and other advertising which Licensee or any of its sponsors proposes to post or make within the Arena. Permission to display such materials or make such announcements shall be subject to the approval of Licensor, in writing, in advance, and Licensor's permission shall not be unreasonably withheld or delayed. Any such advertising shall not violate any then-existing contractual agreement between any advertiser and Licensor, including in respect of any exclusivities granted pursuant to such agreement.
- (2) Licensee agrees that each advertising or promotional agreement that Licensee enters into with a third party concerning advertising, promotions or sponsorships to be exhibited, displayed or conducted at or about the Arena (a "Third Party Agreement") shall not violate any product or service advertising or sponsorship exclusivity which Licensor has afforded any person or entity pursuant to a contractual arrangement with Licensor or its sales agents, and such Third Party Agreements shall, therefore, be and be made subject to Licensor's prior written approval, which approval shall not be unreasonably withheld or delayed (except in connection with a conflict with any Arena exclusivities, in which case such approval may be withheld in Licensor's sole discretion). In addition, Licensee agrees that it shall include in all Third Party Agreements a provision permitting termination thereof by Licensee in the event Licensor hereafter enters into a contractual arrangement with an advertiser requiring exclusivity in respect of a product or service that is the subject of the Third Party Agreement. In the event Licensor requires termination of such a Third Party Agreement, Licensor shall use best efforts to give Licensee at least fifteen (15) days' prior written notice thereof, and Licensee shall not be obligated to terminate such Third Party Agreement unless and until Licensor has agreed to reimburse Licensee for the actual revenues that Licensee otherwise would have derived from such in-Arena advertising and signage, at the rate card value thereof (with appropriate reduction for trade or barter), less any costs that otherwise have been incurred by Licensee in providing such advertising or signage during the term of such Third Party Agreement.

- (3) Subject to the provisions of this Subsection 8.B., Licensor agrees to provide Licensee with a list of then-applicable Arena advertising exclusivities upon request by Licensee prior to the League Season.
- (4) Licensee may have Game related novelties, souvenirs, wares and programs sold by Licensor (through Licensor's designee) from two (2) permanent concession stands in the Arena during all Games. The location of such concession stands shall be in Licensor's sole discretion.

9. License Fee.

A. As part of the consideration for Licensor's agreement to grant the license granted pursuant to Section 1, and to furnish the items set forth in Section 5 of this Agreement, Licensee shall pay Licensor the fees set forth below:

- (1) For each regular season, pre-season or playoff Game, Licensee shall pay Licensor a per-Game base license fee based on the attendance of the Game (attendance will be calculated by the scan count of each Game) (the "Per-Game Fee"), as follow:

<u>Attendance For Any Game</u>	<u>Per Game Fee</u>
Under 3,000	\$4,000
3,001 -5,500	\$3,000
5,501 – 7,000	\$2,000
Over 7,001	\$1,500

- (2) Licensee shall be entitled to a forty cent (\$.40) rebate per paid ticket (not including comps), to each Game, not including Suite & Loge Box seats.
- (3) In addition, as more fully set forth in Section 14.F below, Licensee shall pay Licensor a three percent (3%) commission on all credit card sales at the Arena Box Office.

B. In respect of each scheduled Game, Licensee shall pay to Licensor the Per-Game Fee described in Section 9.A(1) above, based on Licensor's good faith estimate of attendance for each applicable Game, no less than ten (10) business days before such scheduled Game. The parties shall settle for each Game based on actual attendance at the Preliminary Settlement for such Game, as described in Section 11.A below.

C. In addition to the Per-Game Fees and any other amounts due Licensor hereunder (including those amounts described in Section 9.A(3) above), Licensee shall pay Licensor for any reimbursable expenses described in Sections 5.E. and 5.F, 5.G(2)

and 5.H above, or in any other provision of this Agreement (collectively, the "Reimbursable Expenses").

- D. As further consideration hereunder, Licensor shall be entitled to retain all proceeds from the sale of "Club Seats" for the Game, less Twenty Dollars (\$20) per Club Seat sold, per Game, which \$20 shall belong to Licensee (collectively the "Licensee Club Seating Revenue"). Licensee acknowledges that the Licensor shall have the right to charge in its sole discretion a "premium" over the established ticket price for seats in the Arena's Club seating area and Licensor shall retain one hundred percent (100%) of the proceeds associated therefrom. Notwithstanding the foregoing, to the extent the Club Seats are sold by Front Row Marketing Services (or any other party engaged by Licensor to sell such inventory), the \$20 per Club Seat to be paid to Licensee under this paragraph shall be reduced by the commission due from Licensor to such party (currently twelve percent (12%)).
- E. As further consideration hereunder, Licensor shall be entitled to retain all proceeds from the sale of Suite and Loge seats for the Game, less Twenty Dollars (\$20) for each Suite and Loge ticket sold, per Game, which \$20 shall belong to Licensee (collectively the "Licensee Suite and Loge Seating Revenue"). The Licensee Suite and Loge Seating Revenue together with the Licensee Club Seating Revenue shall be referred to herein as the Licensee Premium Seating Revenue. Licensee acknowledges that the Licensor shall have the right to charge in its sole discretion a "premium" over the established ticket price for seats in the Arena's Suite and Loge seating area and Licensor shall retain one hundred percent (100%) of the proceeds associated therefrom. Notwithstanding the foregoing, to the extent the Suite and/or Loge seats are sold by Front Row Marketing Services (or any other party engaged by Licensor to sell such inventory), the \$20 per each Suite and Loge seat to be paid to Licensee under this paragraph shall be reduced by the commission due from Licensor to such party (currently twelve percent (12%)).
- F. Licensee acknowledges that, Twenty-Six (26) Club Seats and six (6) Suites shall be reserved at all times for the use by Licensor and its designees (including during all Games). Tickets for these Twenty-Six (26) Club Seats and six (6) Suites shall not be made available for public sale, and there shall be no charge for tickets to games in such Club Seats and Suites and Licensee shall not be entitled to any License Premium Seating Revenue therefrom .
- G. In the event any governmental authority assesses, levies or imposes any imposition related to Licensee's or the Team's use of the Arena (other than income taxes or similar taxes on Licensor's income), Licensee shall be solely liable for and shall pay, prior to any delinquency, such impositions in full and such payment shall not be credited against any amount required to be paid by Licensee to Licensor hereunder. Furthermore, in the event that the League assesses, levies or

imposes any surcharge or other fee on the price of any ticket, any such surcharge and/or fees shall be the sole responsibility and liability of Licensee (without reimbursement by Licensor) and shall similarly not be credited against any amount required to be paid by Licensee to Licensor hereunder. Any expenses or requirements relating to this Agreement that are imposed by the League are the sole responsibility of Licensee, including without limitation any capital improvements required at or to the Arena due to a change in League rules or regulations as such exist as of the Effective Date.

10. Concessions; Merchandising; Programs.

A. Licensor specifically reserves to itself and its concessionaires the right to sell, and to retain all proceeds from the sale of, food, refreshments and beverages, parking and all other concessions at the Games, except as otherwise expressly provided in Subsection 10.B. below with respect to Team merchandise concessions. Licensee shall not sell or distribute, whether or not on a complimentary basis, any food, beverage or merchandise and shall have no right to operate a concession during the Games, without obtaining Licensor's prior written approval. The net revenue to the Arena (i.e. the amount received by the Arena from its food and beverage provider, less any contribution to the concession capital improvement fund and applicable taxes) from the sale of food and beverage concessions at Games shall be split between the Licensor and Licensee as follows:

- (1) 2010-11 League Season: The following commissions shall be calculated on an incremental basis, as opposed to being retroactive back to dollar one (1):

\$0 to \$12,000 per Game	100% to Licensor, 0% to Licensee
\$12,001 to \$32,000 per Game	80% to Licensor, 20% to Licensee
In Excess of \$32,001 per Game	60% to licensor, 40% to Licensee

- (2) 2011-2012 League Season -- The following commissions shall be calculated retroactive back to dollar one (1) and shall be split between the Licensor and Licensee as follows: seventy-five percent (75%) to Licensor and twenty-five percent (25%) to Licensee.

- (3) 2012-2013 and 2013-2014 League Season -- The following commissions shall be calculated retroactive back to dollar one (1) and shall be split between the Licensor and Licensee as follows: Seventy percent (70%) to Licensor and Thirty percent (30%) to Licensee.

- B. With respect to Term merchandise concessions, Licensor, or its designees, shall sell all programs, souvenir books, t-shirts and jerseys, videotapes, souvenirs, novelty items and other merchandise, at mutually agreed-upon prices, with its own personnel, and all proceeds from the sale of such Team merchandise concessions, after deduction of applicable taxes and all applicable licenses and inspections charges (if any), shall be divided seventy-five percent (75%) to Licensee and twenty-five percent (25%) to Licensor. As between Licensor and Licensee, Licensee shall be responsible for insuring such items against, and Licensee shall bear the risk of, damage, theft or other loss of such merchandise, whether or not such merchandise is in the possession or control of Licensor or its agents at the time of such damage, theft or loss, and Licensee shall be responsible for all freight and transportation of such merchandise to and from the Arena. Payment of commissions, if any, to merchandise/program sellers shall be the sole responsibility of Licensee.

11. Preliminary and Final Settlement.

- A. On the third business day following each Game, the parties shall conduct a preliminary settlement and account to each other for those items of income received and expenses incurred by each with respect to such Game that are distributable to or chargeable against the other party pursuant to the provisions hereof, including, without limitation, the applicable Per-Game Fees (to the extent not previously paid by Licensee pursuant to Subsection 9.B), the credit card commissions set forth in Section 9.A(2), the inside ticket charges set forth in Section 9.A(3), Reimbursable Expenses, sales commissions and expenses in accordance with Subsection 5.F., the merchandise fees due pursuant to Subsections 10.B, the Practice Fee in accordance with Section 12.C, and the Facility Fee in accordance with Section 14.D (the "Preliminary Settlement"), but not including payments under Section 9.F, which shall be paid to Licensor in accordance with the terms thereof. At such Preliminary Settlement the parties shall distribute to the applicable party all monies then due and payable and shall pay to the applicable party any and all reimbursable expenses as provided in this Agreement.
- B. Within thirty (30) days after the date of the last regular season or, if applicable, playoff Game of each League Season during the Term, each party shall prepare and submit to the other a final written and itemized accounting, together with payment of any sums which remain due to the other hereunder ("Final Settlement"). In the case of Licensee, said accounting shall be certified as accurate by Licensee's certified public accounting firm or a Licensee officer acceptable to Licensor. In the case of Licensor, said accounting shall be certified as accurate by Licensor's box office manager or business manager. The requirements set forth in this Subsection 11.B shall survive the expiration or termination of this Agreement.

- C. Any and all payments and fees payable by Licensee hereunder shall be made by Licensee without abatement, deduction or set-off. Licensor may at any time, at its election, collect all or any part of the income or reimbursable expenses due to Licensor or its concessionaire(s) hereunder out of the receipts of sales of tickets, by whatever source, or concessions provided by or on behalf of Licensor. Licensee hereby grants to Licensor, and Licensor shall have, a first and prior lien upon and security interest in and to such receipts and a right of set-off to the extent of any amounts required to be paid by Licensee hereunder. Contemporaneously with the execution hereof, Licensee shall execute and deliver to Licensor a UCC-1 financing statement(s) and other documents and instruments and do all such other things as may be necessary in order for Licensor to perfect the grant of security herein provided.

12. Use of Arena; Time of Occupancy

- A. Licensee licenses the Arena for the sole purpose of playing League basketball Games and the customary pre-Game and post-Game activities presented in connection with these Games and for those other purposes specifically set forth in this Section 12 ("Permitted Use"), at the times set forth in this Agreement, and for no other purpose. Licensee shall not have the right to conduct any pre-Game or post-Game activities, concerts or other entertainment or events in the Arena without the prior written consent of Licensor, which consent shall not be unreasonably withheld, provided there are no conflicts with other events in the Arena at the requested time and the proposed event relates to a Permitted Use. Licensee agrees to use the Arena for the entire Term for the playing of all of its Games.
- B. Licensor agrees to open the Arena to the public at least one (1) hour before each Game. If available, Licensor shall use its best efforts to give Licensee access to the locker rooms at least two (2) hours before each Game and to the playing area for warm-ups and practice by 9:00 a.m. the day of each Game. Access to the playing area includes court access but in no way requires full Arena set-up.
- C. Licensor will permit Licensee to utilize the Arena for practices on non-Game days, at no additional charge, provided that the Arena basketball floor is already set up and there are not conflicts with other events at the Arena on the requested date and time. If there are no other event conflicts but the Arena basketball floor is not set up, Licensor will permit Licensee to utilize the Arena for practice on non-Game days provided that Licensee pays to Licensor those costs incurred in setting up the Arena basketball floor and those additional costs directly incurred as a result of such practice. Such expenses shall be due and payable by Licensee at the Preliminary Settlement for the Game immediately following such practice(s).
- D. Subject to availability, Licensor shall provide to Licensee the use of a room in the Arena and access to a telephone during each Game for reasonable business

purposes. Such room shall be provided at no additional charge, except that Licensee shall be responsible for all long distance phone charges.

- E. Licensors shall provide Licensee, at no additional charge, use of one (1) Suite during all League basketball games held at the Arena. Licensee shall not sell, resell or attempt to sell or resell any tickets to the Suite issued thereto.
- F. Licensors shall provide Licensee, for no additional charge the use of one (1) four (4) seat "Loge Box" for all other events at the Arena, but only to the extent of, and subject to, Licensors' receipt of same free of charge from the promoter of such events. Licensee shall promptly pay for all catering, food and beverage costs associated with such use upon receipt of invoice therefor.

13. Security.

Licensee agrees that, as a material inducement to Licensors to enter into this Agreement and as a condition precedent to Licensors' obligations hereunder, Licensee shall provide, upon signing of this Agreement, (i) an irrevocable, standby letter of credit satisfactory to the Licensors, to guaranty Licensee's performance under this Agreement, in the amount of One Hundred Twenty-Five Thousand Dollars (\$125,000), and (ii) a security deposit ("Security Deposit") in the amount of Fifteen Thousand Dollars (\$15,000). The Security Deposit shall be held to secure performance of Licensee's obligations hereunder, and Licensors may, at its sole discretion, apply such deposit to satisfy any outstanding obligations of Licensee hereunder. The unapplied portion of the Security Deposit, if any, shall be returned to Licensee upon the expiration of the Term, provided that Licensee has complied with all of its duties and obligations hereunder. The Security Deposit may be commingled with Licensors' general funds, and no interest shall accrue thereon.

14. Ticket Sales; Box Office Services.

- A. Licensors will serve as the primary (*i.e.*, advance) box office for the Games during the Term for advance sales and Game-day sales, and have the sole and exclusive right to control the distribution of single game tickets. Licensee shall have the right to control the distribution of season tickets, game-plan strips and group sales tickets, provided that Licensee uses the Ticketing Company as ticket agent for such sales.
- B. Licensors shall act as the custodian of all revenue from the sale of tickets except for those collected by Licensee (*i.e.* season tickets, game-plan strips and group sales, if applicable and to the extent such tickets are sold by Licensee). Such revenues shall not be released to Licensee until the applicable Preliminary Settlement, at which time Licensors and Licensee shall provide a complete accounting of the ticket sales for the applicable Game. Any refunds from tickets sold at Licensors' box office shall be determined by Licensors in Licensors' sole discretion. No interruption or malfunction

of the computerized ticket system or Ticketing Company's services shall be deemed a breach of this Agreement by Licensor or render Licensor liable for damages or entitle Licensee to be relieved of any obligations under the terms of this Agreement; provided, however, Licensor agrees that it shall in good faith exercise all remedies available to Licensor to enforce the terms of its agreement with the Ticketing Company in the event of a breach thereof by the Ticketing Company which negatively affects Licensee's ability to offer for sale tickets to Games, and shall coordinate with Licensee to take appropriate remedial action in the event of any interruption or malfunction of the computerized ticket system or Ticketing Company's services, if any, which negatively affects Licensee's ability to offer for sale tickets to Games.

- C. Licensee shall have the right to establish the ticket prices for the Games, provided that Licensee shall consult in good faith, in advance, with Licensor with respect thereto. Licensee acknowledges that Licensor shall have the right to impose a One Dollar (\$1.00) ticket facility fee (the "Facility Fee") on each ticket sold to the Games on top of Licensee's established ticket prices. All proceeds from the Facility Fee shall belong to Licensor.
- D. Licensee acknowledges and agrees that the "Ticketing Company" shall be the exclusive ticket agent for individual Game ticket sales, via all means and methods, including, but not limited to, telephone, internet, television and outlet sales. However, Licensee may solicit orders for season ticket and group sales through the Ticketing Company's ticketing system.
- E. Licensee shall be responsible for paying a commission of three percent (3%) on all credit card sales from the Arena box office, and shall pay all such amounts to Licensor at each Preliminary Settlement.
- F. Admission to the Games shall be by ticket only (or by press pass or NBADL pass, each of which shall be limited by good business practices, as agreed by the mutual agreement of Licensor and Licensee). Licensee's use and/or distribution of complimentary tickets for the Games shall be subject to Licensor's prior approval (not to be unreasonably withheld or delayed).
- G. Neither party shall permit tickets or passes in excess of the seating capacity of the Arena to be sold or distributed. The parties agree that any seat with limited or impaired vision shall not be placed on sale unless mutually approved and, if so approved, such tickets shall be clearly marked accordingly as "OBSTRUCTED."

15. Compliance With Laws; Other Obligations of Licensee. During the Term:

- A. Licensee covenants and agrees that Licensee shall, and shall cause every person associated with it in its performance of, or exercise of rights pursuant to, this Agreement to, fully abide by, conform to and comply with all applicable federal,

state and local laws, rules, regulations, ordinances and codes (collectively, "Laws"), and all rules and regulations of Licensor for the management of the Arena. Licensee shall not use or attempt to use any part of the Arena for any use or proposed use which will be contrary to law, common decency or good morals or be otherwise improper or detrimental to the reputation of Licensor. Licensee shall, and shall cause every person associated with it in its performance of or exercise of rights pursuant to this Agreement to, use the Arena and associated facilities and properties in a safe and careful manner. Without in any way limiting the foregoing, Licensee agrees as follows:

(1) Licensee shall strictly observe, and shall cause its employees and agents to strictly observe, the Fire Code of the City of Des Moines. Licensee acknowledges and agrees as follows:

(i) All wiring on any booths or display fixtures must meet the rules and standards of the underwriters and Fire Department. Cloth, paper decorations, pine boughs, leaves, tree branches and all other decorations must be flameproofed, and use of combustible material is forbidden.

(ii) Approval must be obtained from the City of Des Moines (or other applicable municipality's) Fire Marshall's Office, and a permit must be obtained from the City of Des Moines (or other applicable municipality's) Department of Licenses and Inspections, in order to bring into the Arena explosives, gasoline, kerosene, acetylene or other fuel or combustibles. Such a permit shall be submitted for review to Licensor.

(iii) The fire fighting equipment in the Arena, such as fire extinguishers and fire hose cabinets and exits, shall not be covered or concealed in any manner whatsoever from public view or access.

(iv) No gasoline motor driven vehicles will be permitted to enter into the Arena, except at Licensor's discretion.

(2) Licensee will comply with all Laws relating to the payment of all applicable taxes (excluding taxes based on Licensor's net income), including, without limitation, amusement or admissions taxes or similar charges on ticket sales, admissions or reservations, business privilege taxes, and use and occupancy taxes, and will make returns and pay all such taxes and charges immediately when due.

B. Licensee agrees not to do any act or suffer any act to be done which shall mar, deface or injure any part of the Arena. Licensee shall not display or erect any letterings, signs, pictures, notices or, except as provided for herein,

advertisements upon any part of the outside or inside of the Arena without the prior written consent of Licensor (which shall not be unreasonably withheld), or make any alterations or improvements to the Arena or any part therein without the prior written consent of Licensor (which may be granted or withheld in Licensor's sole discretion). After each use by Licensee, Licensee shall deliver up to Licensor all areas in and about the Arena in as good condition and repair as the same be found at the beginning of each such use, excepting usual wear and tear. Any damage or loss resulting on account of any misuse by Licensee or its agents, contractors, invitees, employees or the visiting team of any portion of the Arena or equipment in the locker rooms, showers or training rooms, or any use by Licensee or any of the foregoing persons of any part of the Arena in violation of any Law, shall be charged to and paid for by Licensee.

- C. In the event that any minor or foreign national is scheduled to play or appear in any Game, Licensee shall, in advance of such Game, obtain all necessary employment certificates and other permits and authorization as may or shall be required by any governmental authority.
- D. Licensee shall secure in advance, before the time and date of any Game, at Licensee's sole cost: (i) all licenses and permits that may be required by or for the use of the Arena in connection with the presentation of the Games; and (ii) any and all licenses required by any music performance societies, such as ASCAP, BMI and/or SESAC, for music to be utilized in connection with the Games.
- E. In licensing the use of the Arena to Licensee, it is understood the Licensor does not relinquish the right to control the management thereof and to enforce all applicable Laws and Arena rules and regulations. The decision of Licensor's representative as to the number of persons that can safely and freely move about in the Arena shall be final.
- F.
 - (1) A duly authorized representative of Licensee shall be in attendance at the Arena when the doors are opened and throughout each Game. Licensor, its officers, agents and servants shall have the right at all times to enter any part of the Arena.
 - (2) Licensee, in coordination with Licensor, shall provide all of its representatives and working personnel to be admitted to any working area of the Arena with distinctive, visual identification which shall be approved by Licensor in advance of each League Season during the Term.
- G. All portions of the sidewalks, entries, doors, passages, vestibules, halls, corridors, stairways, passageways and all ways of access to public utilities of the Arena shall be kept unobstructed by Licensee and persons acting under it and not used for any other purpose other than ingress or egress.

- H. Licensee shall maintain in good standing its membership in the League and refrain from taking any action which leads to the revocation or loss of Licensee's right to own or operate a League franchise.
- I. Licensee shall not permit the Team to play at any location other than the Arena (except in the event the Arena is not available) any pre-season, regular season, or playoff "home" Game, or any other games that the League schedules for the Team within the Team's franchise area.

16. Insurance.

- A. Licensee shall obtain, at its own cost and expense, and maintain in full force and effect during the Term, with insurance companies currently rated A-XII or better by Best's Key Rating Guide, a minimum of the following insurance:
 - (1) Comprehensive General Liability Insurance in the name of Licensee, which insures all operations of Licensee contemplated by this Agreement and the contractual assumption of liability reflected by this Agreement. Such General Liability Insurance shall be written with a limit of at least One Million Dollars (\$1,000,000) combined single-limit per occurrence and Two Million Dollars (\$2,000,000) in the aggregate for bodily injury and property damage liability, personal injury liability, and coverage for all acts and omissions of any employees, agents or players or any contractors or subcontractors retained by Licensee. Such policy shall stipulate that such insurance is primary of any valid and collectable insurance maintained by any of the foregoing entities for any claim(s) arising out of the playing of the Games or use of the Arena and that Licensee's insurance carrier will not seek indemnification from any of the foregoing's insurance carriers for any such claim(s);
 - (2) Excess liability insurance with limits of liability of not less than Four Million Dollars (\$4,000,000). The policies shall be in umbrella form and shall provide excess coverage for all other listed liability coverages, including the employer's liability portion of the workers' compensation coverage;
 - (3) Special Form ("all risks") property insurance against loss or damage to Licensee's property in the Arena, in an amount equal to the replacement costs of such property.
 - (4) Statutorily required workers' compensation and employer's liability insurance respecting its players and employees and other personnel whose services are contemplated by this Agreement, with statutory benefits and limits which shall fully comply with all federal, state and local

requirements applying to this insurance, and which shall also include "Broad Form All States" and voluntary compensation endorsements; and

- (5) Comprehensive automobile liability insurance insuring against liability arising from the maintenance and use of all owned, non-owned, hired, leased and rented trucks, automobiles and other vehicles brought to or operated at the Arena or the surrounding premises, with a combined single limit for each occurrence of not less than One Million Dollars (\$1,000,000.00) for bodily injury, death or property damage. The coverage described in this subsection (5) may be part of the policy described in subsection (1), above, or may be covered by a separate policy.
 - (6) To the extent commercially available on commercially reasonable terms, and upon thirty (30) days' advance notice to Licensee from Licensor, Licensee shall obtain insurance against such other operating risks, which now or hereafter may be customary to insure against in the use by licensees of facilities similar to the Arena, and such additional amounts and types of coverage's as may be desirable in the reasonable judgment of Licensor.
- B.
- (1) All such policies of Licensee (other than the workers' compensation policy) shall list the Licensor, Polk County, Iowa, Global Spectrum, L.P. and the Wells Fargo Arena as additional insured's under such policies. Additionally, all such policies of Licensee shall be endorsed to provide that the underwriters and insurers of Licensee shall not have any rights of subrogation against Licensor, Polk County, Iowa, Global Spectrum L.P., Wells Fargo Arena, or any of their respective partners, employees, or agents. Further, all such policies of Licensee shall provide for thirty (30) days' notice to all additional insureds prior to any adverse modification or termination of any such policy.
 - (2) In the event any of the insurance coverage or terms of any particular coverage required to be maintained or cased to be maintained by Licensee pursuant to the terms of this Section 16 are not commercially available at reasonable rates, Licensee shall give written notice thereof to Licensor within three (3) days after execution and delivery of this Agreement. Licensor shall have the right, at its option, to place the coverage required at the expense of Licensee if such coverage is commercially available to Licensor at reasonable rates.
 - (3) Certificates of all insurance required pursuant to this Section 16. shall be provided to Licensor upon execution hereof.
 - (4) LICENSOR SHALL HAVE THE ABSOLUTE RIGHT TO TERMINATE THIS AGREEMENT UPON WRITTEN NOTICE TO LICENSEE IF

LICENSEE DOES NOT DELIVER TO LICENSOR THE CERTIFICATE OR CERTIFICATES OF INSURANCE REQUIRED HEREUNDER. IN THE EVENT OF SUCH TERMINATION BY LICENSOR, THERE SHALL BE NO FURTHER LIABILITY OF WHATSOEVER KIND OR NATURE BY LICENSOR TO LICENSEE, AND LICENSOR SHALL RETAIN THE RIGHT TO PROCEED WITH A LEGAL ACTION AGAINST LICENSEE TO RECOVER ANY AND ALL DAMAGES AND/OR LOSS OF PROFITS SUSTAINED BY LICENSOR BY REASON OF LICENSEE'S DEFAULT HEREUNDER.

17. Breach.

- A. In the event Licensee fails to perform any of its obligations herein, Licensor shall give Licensee notice in writing of such breach. If Licensee shall not cure said breach within ten (10) days after receipt of notice (if a monetary breach), or within thirty (30) days after receipt of notice if a breach of any other nature which is capable of cure, then Licensor, at its option, shall have the right to: (i) terminate this Agreement by giving five (5) days written notice thereof to Licensee, (ii) remove and store Licensee's property at the Arena, at Licensee's expense, (iii) sue Licensee for legal or equitable relief, (iv) exercise its rights with respect to the security provided pursuant to Section 13, and/or (v) pursue any other remedy allowed by this Agreement, by law or at equity; provided, however, if Licensee's breach is not capable of cure and/or Licensor may suffer irreparable harm as a result of Licensee's breach, then Licensor shall not be required to give written notice to Licensee, or to wait any period of time, before pursuing any remedies hereunder. In any proceeding for relief hereunder, the prevailing party shall be entitled to recover its costs and reasonable attorneys' fees incurred in or by reason of such proceedings. The unenforceability, in whole or in part, of any of the remedies made available in this Section 17 shall not affect or limit Licensor's right to any of the remaining remedies available to Licensor.
- B. Notwithstanding anything stated in this Agreement to the contrary, if a petition in bankruptcy is filed against Licensee or a bill in equity or other proceedings for the appointment of a receiver or a trustee for Licensee is filed against Licensee, or if proceedings for reorganization or for an arrangement with creditors under any State or Federal law be instituted against Licensee, or if a voluntary petition in bankruptcy is filed by Licensee, then, unless the same shall have been discharged within ninety (90) days after the happening of such event, such event shall be deemed to be a breach of this Agreement, and thereupon, ipso facto, and without notice or other action by Licensor, Licensor shall be entitled to any and all of the remedies specified in this Agreement and/or provided by law or at equity.
- C. All of the remedies set forth above or elsewhere in this Agreement given to Licensor and all rights and remedies given to Licensor by law or at equity shall be cumulative and concurrent.

18. Indemnity; Release of Liability.

- A. (1) Licensee shall indemnify, defend and hold harmless Licensor, the County, County officials, including without limitation the County Board of Supervisors, and any other present or future lender providing financing to the County in connection with their construction or operation of the Arena, and their respective successors and assigns, and each of their respective partners, agents, officers, directors, employees and representatives (collectively, "Indemnitees") from and against (i) any and all claims, suits, losses, injuries, damages, liabilities and expenses (including, without limitation, reasonable attorneys' fees and expenses) and costs of investigation (whether or not litigation occurs) (collectively, "Losses"), occasioned in connection with, or arising or alleged to arise from, wholly or in part, any breach by Licensee of any of its representations, warranties, covenants or agreements contained herein and (ii) any and all Losses occasioned in connection with, or arising or alleged to arise from, wholly or in part, (A) the acts or omissions, or violation of any applicable law, rule, regulation or order, of or by Licensee, or any of its agents, owners, officers, directors, members, managers, representatives, contractors, employees (and in respect of which, Licensee hereby waives its immunity under the Workers Compensation Act), servants, players, guests, invitees, participants or performers appearing at the Games or other events Licensee is permitted to host hereunder (including support personnel in connection with the presentation of the Game), patrons, persons assisting Licensee (whether on a paid or voluntary basis) or any person admitted to the Arena by Licensee, at any time while the Arena (or any part thereof) is being used by or for the benefit of Licensee or is under the control of Licensee, or (B) Licensee's exercise of the privileges herein granted, except to the extent any such Losses were caused by the gross negligence of Licensor. It is further the intent of this Agreement that this indemnity provision shall apply to any claims made by employees of Licensee against Licensor or any of the Indemnitees, and this Agreement is deemed a written agreement for indemnity under the Iowa Workers' Compensation laws.
- B. Licensee hereby relieves and releases Licensor and the Indemnitees from:
- (1) any and all liability to Licensee by reason of any injury or damage to any property in the Arena belonging to any of Licensee, its employees or invitees;
 - (2) any and all liability to Licensee or others (to the extent Licensee may relieve or release Licensor as to others) as a result of theft, vandalism or pilferage of any property belonging to or brought into the Arena by Licensee.

- C. Licensee acknowledges that this Agreement imposes no contractual obligations upon the County, unless, until and only if the County expressly assumes in writing the obligations of Licensor hereunder pursuant to the provisions of that certain Master Lease Agreement by and between the County and Licensor, of even date herewith (the "Master Lease Agreement"); that in the event of a default or breach under this Agreement, of any kind or nature whatsoever, Licensee shall look solely to Licensor at the time of the default or breach for a remedy or relief; and that neither the County nor any member (including any member of the County's Board of Supervisors), official, officer, employee, agent, independent contractor or consultant of the County, shall be liable to Licensee or any successor in interest to Licensee, in the event of any default or breach by the County under the Master Lease Agreement or of any other obligation under the terms of this Agreement and that Licensor is not and shall not act as an agent of the County or in any manner contract for or bind the County.
- D. This provisions of this Section 18 shall survive any termination or expiration of this Agreement.

19. Representations and Warranties.

- A. Each party represents and warrants to the other that:
 - (1) such party has the full corporate or partnership power and authority to enter into and fully perform this Agreement;
 - (2) this Agreement has been duly executed and delivered by such party and constitutes a valid and binding obligation of such party, enforceable against such party in accordance with its terms (subject to general principles of equity and creditors' rights generally); and
 - (3) none of the execution, delivery or performance of this Agreement (i) requires the approval or consent of any third party (except for the League, whose consent Licensee shall promptly seek upon execution and delivery hereof, and Polk County, Iowa, whose consent Licensor shall promptly seek upon execution and delivery hereof), or (ii) conflicts with or results in any breach or violation of, or constitutes a default under, any material agreement or other instrument or any decree, order, law, statute, rule or regulation (governmental or otherwise) to which such party is a party or by which such party is bound.
- B. Licensee further represents and warrants to Licensor, on and as of the date hereof, that it has obtained a valid franchise from the League to present the Games in the Iowa State area, that such franchise is in good standing as of the date hereof, and that it has fulfilled all of its obligations to the League.

20. Loss of Use of Arena; Force Majeure.

- A. Casualty Loss. Should the Arena or any part thereof be destroyed or damaged by fire or by any other cause, or if any Event of Force Majeure (defined below) shall render Licenser unable to provide the Arena to Licensee for the purpose of playing the Games as contemplated hereunder, (i) Licenser shall have the right to terminate this Agreement, without being liable or responsible to Licensee for any damage or loss caused thereby; and (ii) if such condition was not caused by an act or omission of Licensee or its employees, agents or representatives, and (A) the County notifies Licensee in writing that it has determined not to restore the Arena, or (B) due to such condition Licenser is unable to provide the Arena to Licensee for the purpose of playing the Games as contemplated hereunder for a period of twelve (12) consecutive months, Licensee shall have the right to terminate this Agreement, without liability (other than liabilities accruing prior to the occurrence of such condition, if any). **Licensee hereby waives and releases Licenser and the Indemnities from any and all Losses on account of such termination (whether effected by Licenser or Licensee), irrespective of whether such Losses arise out of the negligence (whether ordinary or gross) of Licenser or any of the Indemnities.**
- B. Safety Precautions. Licensee acknowledges and agrees that Licenser shall have the power to extinguish all utilities and order the evacuation of all or any portion of an Arena, or cause to be removed therefrom any person or group of persons, any materials, equipment or other items if, in its sole judgment, danger is imminent or dangerous circumstances have already occurred and such action is necessary to secure the safety and welfare of persons or property. In such event, Licensee hereby waives and releases Licenser and the Indemnities from any and all Losses related thereto, irrespective of whether such Losses arise out of the negligence (whether ordinary or gross) of Licenser or any of the Indemnities.
- C. Force Majeure. Should Licensee be unable to take possession of the Arena or present any Game due to an Event of Force Majeure, without limiting the terms of Section 20.A above, (i) neither Licenser nor Licensee shall have any liability under this Agreement, and (ii) performance hereunder shall be suspended during and as often as any such interruption caused by such Event of Force Majeure and the Term hereof shall be extended for a period of time equal to the period performance hereunder is suspended due to such cause, and (iii) Licensee, as its sole remedy and relief, shall receive a refund of any uncommitted or cancelable advance payments; provided that during the period of such Event of Force Majeure, Licensee shall attempt to rebook any such missed Game(s) at the Arena on a date or dates satisfactory to the parties, and if any such games cannot be re-booked at the Arena, Licensee shall be entitled to make arrangements for an alternate site to play such Games within the Des Moines Core-Based Statistical Area, which is a federally established area consisting of Dallas, Polk, Warren, Madison and Guthrie Counties, with priority given to Veterans Memorial Auditorium, and Licensee shall be entitled to play such games at such alternate site, but only during the period of time that such Event of Force Majeure shall

exist and provided that Licensee uses commercially reasonable efforts to mitigate and overcome such Event of Force Majeure to the extent such is within the control of Licensee. Upon the removal of such condition, this Agreement and the rights and obligations of the parties hereunder shall be reinstated for the remainder of the Term. The term "Event of Force Majeure" shall mean any and all acts of God, strikes, lock-outs, work stoppages, industrial disturbances, acts of the public enemy, laws, rules and regulations of governmental or quasi-governmental entities, wars or warlike action (whether actual, impending, or expected and whether de jure or de facto), arrest or other restraint of government (civil or military), blockades, insurrections, riots, vandalism, terrorism, epidemics, lightning, earthquakes, hurricanes, storms, floods, washouts, fire or other casualty, civil disturbances, explosions, breakage or accidents to equipment or machinery, threats of bombs or similar interruptions, confiscation or seizure by any government or public authority, nuclear reaction, radioactive contamination, accidents, or any other causes, whether of the kind herein enumerated or otherwise that are not reasonably within the control or caused by the party claiming the right to delay the performance on account of such occurrence; provided, however, in no circumstances shall the monetary inability of a party to perform any covenant, agreement or other obligation contained in this Agreement be construed to be an Event of Force Majeure.

21. Miscellaneous.

- A. This Agreement (and the schedules hereto) reflect the entire agreement between the parties with respect to the subject matter hereof, supersedes any and all prior agreements or understandings, written or oral and the parties shall not be bound by any agreement, understanding or conditions with respect to the subject matter hereof other than are expressly set forth and stipulated in this Agreement or any subsequent written agreement signed by both parties hereto.
- B. Notices by Licensor and Licensee to each other shall be deemed duly given if delivered personally with a signed receipt evidencing such delivery, mailed by certified mail, return receipt requested, postage prepaid, or delivered by a duly recognized air courier service to the following addresses:

Licensee: Iowa Energy LLC
1701 Ruan Center
Des Moines, IA 50390
Attn: Jerry Crawford

With a Copy To:

Licensor: Wells Fargo Arena
c/o Global Spectrum, L.P.
530 Third Street
Des Moines, IA 50309
Attn: Matt Homan, General Manager

With a Copy To:

Comcast-Spectacor
3601 S. Broad St.
Philadelphia, PA 19148
Attn: General Counsel


- C. Licensee shall not have the right to assign, sub-license, mortgage, pledge or otherwise transfer this Agreement or Licensee's rights and obligations herein without the prior written consent of Licensor. Licensor may assign this Agreement to any successor manager or operator of the Arena without restriction, provided that said successor manager or operator assumes in writing all obligations of Licensor under this Agreement. This Agreement and all the terms, conditions and covenants hereof, shall, subject to the foregoing limitations as to assignment, inure to the benefit of and bind the parties hereto and their respective successors and permitted assigns.
- D. Pursuant to this Agreement, the relationship between the Licensor and Licensee is that of independent contractors and not agents or employees. Under no circumstances shall this Agreement be considered a contract of partnership or joint venture.
- E. This Agreement is entered into in the State of Iowa and, in the event of any controversy or litigation, shall be governed by and construed in accordance with the laws of the State of Iowa, without regard to conflicts of law principles. The prevailing party in any litigation or other similar proceeding related thereto shall be entitled to recover its reasonable attorneys' fees and other costs incurred by the prevailing party in such action.
- F. No waiver shall be effective unless in writing and executed by the party to be charged with such waiver. No waiver shall be deemed a continuing waiver in respect of any subsequent breach or default, whether of similar or dissimilar nature, unless expressly so stated in writing.
- G. The invalidity or unenforceability of any particular provision of this Agreement shall not affect the other provisions hereof and this Agreement shall be construed in all respects as if such invalid or unenforceable provision were omitted.

- H. Any headings preceding the text of the several sections hereof are inserted solely for convenience of reference and shall not constitute a part of this Agreement nor shall they affect its meaning, construction or effect.
- I. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original but together shall constitute one and the same instrument.
- J. This Agreement shall be terminable at Licensor's option (without limiting Licensor's other rights and remedies) if Licensee loses its League membership.
- K. Licensor and Licensee will, at any time and from time to time, upon not less than ten (10) days' prior written request by the other, execute, acknowledge and deliver to the other a statement in writing certifying that this Agreement is unmodified and in full effect (or, if there have been modifications, that this Agreement is in full effect as modified, and setting forth such modifications) and the dates to which the license fees and other sums credit to such license fees or payable by the other party hereunder have been paid and, either stating that to its knowledge no default exists hereunder or specifying each such default of which the other may have knowledge.
- L. The parties shall not make any public disclosure or announcement regarding the matters contemplated herein without the prior written consent of the other party, except for such disclosures to employees, lenders, accountants, lawyers, the County, the League and other particular groups as may be necessary or appropriate in connection with the matters contemplated hereby, and except as otherwise may be required by law.
- M. This Agreement is subject and subordinate to, in all respects, the terms of the Master Lease Agreement, and is further subject to the approval of the County. In the event of termination of the Master Lease Agreement for any reason, the County shall have the right, in its sole discretion, to assume, or to cause a successor operator of the Arena to assume, this Agreement and, in such case, this Agreement shall remain in full force and effect, and Licensee shall make all future payments hereunder to the County or such successor operator, as applicable (which payments shall not be reduced or otherwise diminished due to or related to such termination). Licensee agrees that, in such case, the County shall have no obligation to cure any defaults of Licensor under this Agreement, and shall bear no liability or responsibility for any breach by Licensor or losses of the Licensee.


IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement on the day and year first above written.

GLOBAL SPECTRUM, L.P.

As agent for Wells Fargo Arena

By: 
Matt Homan
GM, Iowa Events Center

IOWA BASKETBALL, LLC

By: 
Name:
Title: Managing Director

SCHEDULE I

SCHEDULING PROCEDURES

A. Scheduling Generally.

Licensee acknowledges that scheduling priority shall be given to "marquis" events (events with the likelihood of selling out) or events that have previously licensed the Arena, including, without limitation, Iowa High School Boys and Girls State Championship basketball tournaments, the Iowa High School Boys wrestling Championships and certain concerts, family shows and moto sports). Notwithstanding the foregoing, Licensors hereby commits to give Licensee the opportunity to play Games at the Arena on weekend dates, as follows:

For the 2010-2011 and 2011-2012 League Seasons, Licensors shall give the Licensee the opportunity to play Games at the Arena on at least eleven (11) weekend dates (Friday night, or Saturday night), with at least five (5) Saturday night dates included therein.

For the 2012-2013 and 2013-2014 League Seasons, Licensors shall give the Licensee the opportunity to play Games at the Arena on twelve (12) weekend dates (Friday night or Saturday night), with at least six (6) Saturday nights included therein.

B. Scheduling Procedures.

Subject to the provisions of Section A. above:

1. Exhibition and Regular Season. Prior to each League Season, Licensors shall provide Licensee, no later than April 1 before such League Season, with a list of available dates for the Arena in November, December, January, February, March and April of such League Season, and Licensee shall select a total of thirty (30) dates by no later than the following May 15 (the "Game Dates"). By no later than the date on which the official League Season schedule is announced (approximately August 1), Licensee shall select 24 dates out of the thirty (30) Game Dates on which to present its twenty-four (24) regular season Games at the Arena, and Licensee shall release to Licensors the six (6) remaining Game Dates which Licensee does not elect to use.

2. Playoff Season. Licensors shall not be required to hold any dates for playoff games. Licensee shall notify Licensors as soon as possible regarding the anticipated time period in which playoff games are required to be held, and the parties shall coordinate with each other in an attempt to determine mutually agreeable dates for such playoff games, subject to the preemption provisions of Section A above.

3. Increase in Game Schedule. If the League increases the number of regular season Games in its schedule, the number of Game Dates shall be increased, subject to availability and the preemption provisions of Section A above, any increase in the number of weekend games should be mutually agreed upon.